

## 16A C.J.S. Constitutional Law § 788

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### a. In General

## § 788. International travel

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### West's Key Number Digest

West's Key Number Digest, Constitutional Law 1284

**The courts are not in agreement as to whether the right to international travel is a fundamental right.**

It has been said that the freedom to travel out of the country is a fundamental constitutional right or liberty,<sup>1</sup> that restrictions on international travel must be carefully tailored to serve a substantial and legitimate government interest,<sup>2</sup> and that a United States citizen's constitutional right to travel abroad may not be curtailed by the state in the absence of criminal conviction and penal incarceration.<sup>3</sup>

However, it has also been said that the freedom of international travel, although a protected and valued right,<sup>4</sup> is no more than an aspect of the liberty interest protected by due process<sup>5</sup> and is not a fundamental right protected by the Constitution.<sup>6</sup> Therefore, legislation which is said to infringe that freedom is not to be judged by the same standard

applied to laws that penalize the right of interstate travel,<sup>7</sup> and an infringement of the freedom of international travel violates substantive due process requirements only if it is wholly irrational.<sup>8</sup>

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#### Footnotes

- 1 U.S.—U.S. v. Shaheen, 445 F.2d 6 (7th Cir. 1971); In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).
- 2 U.S.—In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).  
**Invalid injunction**  
An injunction issued in a postdivorce proceeding which permanently enjoined a former wife from traveling outside the continental United States without the former husband's consent, in response to the husband's petition to modify the parent-child relationship after the wife had taken the child to Mexico, violated the mother's constitutional right to travel; the injunction was overly broad, unreasonably restrictive, and unrelated to either the child's best interest or international child-abduction prevention.  
Tex.—Arredondo v. Betancourt, 383 S.W.3d 730 (Tex. App. Houston 14th Dist. 2012).
- 3 N.Y.—Estate of Sanchez, 126 Misc. 2d 199, 481 N.Y.S.2d 601 (Sur. Ct. 1984).
- 4 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 5 U.S.—Califano v. Aznavorian, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978); Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).  
Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 6 U.S.—Eunique v. Powell, 302 F.3d 971 (9th Cir. 2002); Jack v. Trans World Airlines, Inc., 854 F. Supp. 654, 29 Fed. R. Serv. 3d 896 (N.D. Cal. 1994); Dearth v. Holder, 893 F. Supp. 2d 59 (D.D.C. 2012); Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).
- 7 U.S.—Califano v. Aznavorian, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978).  
**Not same as interstate travel**  
U.S.—Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003).
- 8 **Seizure of passport**  
U.S.—Duncan v. Goedeke and Cleasey, 837 F. Supp. 846 (S.D. Tex. 1993).

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